

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: U S WEST COMMUNICATIONS, INC., AND QWEST INC.	DOCKET NO. SPU-99-27
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**ORDER DENYING MOTION TO COMPEL
AND REQUEST FOR EXTENSION OF TIME**

(Issued December 7, 1999)

On November 23, 1999, AT&T Communications of the Midwest, Inc. (AT&T), filed a motion to compel answers to discovery and for an extension of time to file prepared direct testimony. AT&T states that on October 28, 1999, AT&T propounded data requests to U S WEST Inc. (U S West), and Qwest Communications, Inc. (Qwest), (collectively Applicants) seeking information AT&T believes to be within the scope of this proceeding. AT&T states that as of the date of the motion, of the 103 data requests propounded by AT&T, the Applicants have refused to provide any information in response to 19 requests, refused to provide answers to parts of another 21 requests, and provided either incomplete or nonresponsive answers to 33 more requests. AT&T seeks an order directing Applicants to provide complete answers to the data requests and extending by 14 days the date by which AT&T's direct testimony is due, from December 3, 1999, to December 17, 1999.

Applicants filed a response to AT&T's motion on December 1, 1999, arguing that the motion to compel and request for extension should be denied.

Applicants argue AT&T served its data requests on October 28, but was not granted intervenor status until November 8, 1999, and "thus the great bulk of the delay complained of by AT&T is due not to Joint Applicants but to the untimeliness of AT&T's petition to intervene."

Applicants also argue that AT&T's motion to compel lacks specificity; that Applicants appropriately restricted their responses to the jurisdictional boundaries of Iowa; and that many of AT&T's requests are not connected to or relevant to the proposed merger. As a final general response, Applicants claim that in many cases AT&T's real complaint is that AT&T is not satisfied with a truthful, responsive answer. Applicants argue that "AT&T's wish for some other answer cannot challenge the adequacy and completeness of the answer provided."

Applicants then provide specific responses to some of the AT&T claims. Applicants object that certain data requests seek information not related to the merger and beyond the scope of the docket, that certain data requests are overly broad, and that some data requests seek "business plan information that is not appropriate for discovery by a competitor in a regulatory docket."

The Board will not grant AT&T's request for an extension of time to file testimony. The existing procedural schedule, with hearing on February 1, 2000, and reply briefs due on February 18, 2000, allows the bare minimum time for the Board to

issue a decision by March 17, 2000, the deadline for Board action in this docket.

There is simply no time available for further extensions of the procedural schedule without dismissing the application for re-filing. However, it appears AT&T may be entitled to additional or more complete responses to some of its data requests.

Therefore, the Board will permit AT&T to file additional testimony, after the December 3, 1999, filing date but not later than January 12, 2000, and accompanied by a motion to accept late-filed testimony, if further discovery produces information that AT&T believes the Board should consider. The Board will consider any such motion, and any resistance that may be filed within five days of the motion, if and when such a motion is filed.

With respect to AT&T's motion to compel, the Board will not grant the motion at this time, but the Board will provide the parties with some guidance regarding discovery in this docket. In the motion to compel, AT&T did not individually describe each data request, the Applicants' response (if any), and the issues AT&T believes to be presented by each response. Instead, AT&T offered only broad descriptions of the general issues raised by some of the Applicants' response, without specifically identifying which issues were associated with which responses. The Board is not going to undertake, on AT&T's behalf, the task of determining which issues are raised by each response, particularly when AT&T was apparently unwilling to take on that task for itself.

The Board will, however, address some of the general issues raised, with the expectation that the parties will then govern themselves in a manner that will obviate further motions to compel.

First, it appears from the Applicants' response to Data Request No. 1 (and other data requests) that AT&T and the Applicants have not yet entered into a confidentiality agreement. On that basis, the Applicants object to producing "confidential and highly sensitive" information to AT&T. The same lack of a confidentiality agreement appears to lie behind the Applicants' objection to producing "business plan information." The Board expects AT&T and the Applicants immediately to negotiate a confidentiality agreement that will address Applicants' concerns while providing AT&T with complete access to all relevant information in this docket.

Applicants also state that they unilaterally "narrowed their responses to the jurisdictional boundaries of Iowa," apparently even when a data request sought potentially relevant information concerning U S West's or Qwest's national activities. (Joint Response at page 4.) The Board is concerned that a party to a proceeding would make unilateral decisions to narrow the scope of discovery without first discussing its concerns with the requesting party. If Applicants believe a particular AT&T data request or set of data requests is overly broad or seeks information irrelevant to this docket, counsel for Applicants should raise the issue with counsel

PAGE 5

for AT&T, rather than simply choosing to restrict Applicants' responses without discussion, on the basis of their own view of the Board's jurisdiction in this matter.

Based on a review of the data requests and response attached to AT&T's motion to compel, it appears most of the issues raised by the motion should be resolved if the parties will execute a confidentiality agreement and the Applicants will then provide the confidential information referred to in their responses. The Board expects the parties to pursue this course of action in a timely manner.

IT IS THEREFORE ORDERED:

The motion to compel and request for extension of time to file prepared direct testimony, filed in this docket on November 23, 1999, by AT&T, is denied.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Judi K. Cooper
Executive Secretary, Deputy

/s/ Diane Munns

Dated at Des Moines, Iowa, this 7th day of December, 1999.